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5-5754

OGC Has Reviewed

27 April 54

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MEMORANDUM TO: Colonel White

REFERENCE : "Questions involving personal pecuniary liability, or loss or shortage of Government funds not properly accounted for, shall be referred by the Chief, Finance Division, to the Comptroller, who will provide for an adequate investigation and make recommendations to the Deputy Director (Administration) for final action."

25X1A6A 1. A staff study (Tab 1) was initiated by the Comptroller on 30 November 53 because it was felt that a decision rendered by the Office of General Counsel on 24 July 53 (Tab A), regarding a shortage [redacted] during the payment of a payroll which could not be written off, made our CFR 1.4 (c) ineffective. The OGC opinion stated that a "loss must have been incurred in circumstances peculiar to this Agency's mission". When there is no negligence or fraud, accountable officers may be relieved by the Comptroller General or the Congress upon recommendation of the head of the Agency. This right should be extended to our personnel, but for security reasons we prohibit them from petitioning relief from the Comptroller General. Accordingly, the principle of "circumstances peculiar to this Agency's mission" is not the sole criteria but in addition the principles governing relief extended to other Government agencies should be available to our personnel. Accordingly, our regulations should provide relief for accountability where there is no evidence of fraud or gross negligence in cases where we cannot allow the individual to petition the General Accounting Office or Congress for relief. In the development of the staff study and its attached statement of policy and procedures, the Comptroller greatly expands existing regulations and establishes criteria, procedures and authority of much greater detail than existed in the Confidential Funds Regulations.

2. I sent this staff study to the OGC for review and comments and its reply is contained in Tab 2, dated 29 March 1954. The OGC points out its decision of 24 July 1953 was misinterpreted in that it was felt the facts in that case showed no basis for requiring a lesser standard of care because no operational necessity existed. The file on that case appeared to establish that there was no malfeasance on the part of the disbursing officer, but did not establish that he was not negligent in this instance. The Office of General Counsel feels that the existing CFR is adequate and that the A-DD/A may write-off shortages under this authority when it is proven that the deficiency is not a result of fraud or negligence on the part of the custodian.

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3. In Tab 3, dated 20 April 1954, the Deputy Comptroller reaffirms the recommendation in his staff study and strongly feels that a board or ad hoc committee review is advantageous. He points out further that it is necessary that regulations be expanded to provide basic reporting procedures, policy and criteria for the handling of shortages and losses of funds.

4. Following the recommendation of the Deputy Comptroller, I suggest that you hold a meeting with representatives of the General Counsel, Comptroller, and Auditor-in-Chief in order that a decision may be reached as to what revisions and/or additions should be made in present regulations to contain sufficient policy guidance and procedures for the proper, most equitable and efficient handling of losses and shortages of funds.

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